CRA No.268 of 1995
with
12.08.21 CRAN No.1 of 2020 (Old CRAN No.642 of 2000) **(not in the file)**
(S.R.) and
Sl.08 CRAN No.3 of 2020
Ct.30 **Via video conference**

In Re: This is an application under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000**;**

And

In re: Dinesh Saha ...
petitioner/appellant/appellant.

Mr. Sudipto Moitra, Sr. Adv.
Mr. Vijay Verma
Mr. Dwaipayan Biswas ... appellant/applicant.

Mr. Rana Mukherjee
Ms. Sukanya Bhattacharya
Mr. Narayan Prasad Agarwala ... for the State.

This is an application under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short, the said Act) filed by the appellant/applicant in connection with the appeal being CRA no. 268 of 1995.

Shorn of unnecessary details the facts are that the appellant/applicant herein along with another were convicted in connection with an incident, which occurred on 2nd January, 1993. Aggrieved by the said order of conviction, the said appellants preferred an appeal, which was registered as CRA No.255 of 1996. The said appeal was disposed of by a judgment dated 15th December, 2020 setting aside the impugned order of conviction and directing the learned trial court to hold a proper inquiry, in accordance with law, for ascertaining as to whether on the date of occurrence, i.e. on 2nd January, 1993, the applicant herein was a juvenile and thereafter to proceed for disposal of the case afresh, according to law. On the basis of such directions, the

learned court below decided the issue of juvenility in favour of the applicant by an order dated 17th June, 2011 and by an order dated 29th June, 2011 the applicant was directed to be released at once. The applicant herein was also arraigned as an accused in a case registered pertaining to an incident which occurred on 18th December, 1992 and the applicant along with two others were convicted. Aggrieved by the said order of conviction, an appeal was preferred, being CRA No.268 of 1995 but the same was dismissed by a judgment delivered on 19th January, 2007. A Special Leave Petition was preferred against the said order. However, the same was also dismissed.

Mr. Moitra, learned senior advocate appearing for the applicant submits that when the issue of juvenility pertaining to an incident dated 2nd of January, 1993 has been decided in favour of the applicant, there can be no dispute that the applicant was also a juvenile on the date of the incident prior thereto i.e. on 18th December, 1992 and as such in view of the provisions of Section 7A of the said Act, the applicant needs to be immediately released. In support of such argument, Mr. Moitra has placed reliance upon an unreported order of a Coordinate Bench of this Court passed in CRA 540 of 2009.

He further submits that the applicant is presently aged about 46 (forty-six) years and he had already suffered incarceration for a period of 13 (thirteen) years.

Mr. Mukherjee, learned advocate appearing for the State opposes the applicant's prayer and submits that the judgment dated 15th December, 2010 passed in CRA No.255 of 1996 has already attained finality in view of dismissal of the Special Leave Petition preferred against the same. He, however, could not dispute the fact that the applicant was a juvenile on 18th December, 1992.

We have heard the learned advocates appearing for the respective

parties and considered the materials on record.

Section 7A of the said Act empowers the appellate court to consider the issue of juvenility even after dismissal of the appeal. It appears that the Special Leave Petition was also not dismissed on merits. Upon conducting an inquiry in terms of the judgment dated 15th December, 2010, the learned court below arrived at a categoric finding that the applicant was a juvenile on 2nd January, 1993. In the light of such assessment of age, we are of the opinion that no further inquiry is required for establishment of the fact that the applicant was also a juvenile on the date of the incident, which occurred prior thereto, i.e., on 18th December, 1992 and that the applicant would be entitled to the benefits under the said Act. Records further reveal that the applicant had already undergone imprisonment for 13 (thirteen) years.

For the reasons as discussed and in the light of the finding that the applicant was a juvenile on the date of occurrence, the sentence imposed upon him is set aside.

The applicant, namely, **Dinesh Saha** shall be forthwith released from custody, if not wanted in any other case.

Accordingly, the application, being CRAN No.3 of 2020 along with connected application being CRAN No.1 of 2000 (Old CRAN No.642 of 2000 are disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Subhasis Dasgupta, J.) **(Tapabrata Chakraborty, J.)**